

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 18-31168

Chapter 13

Johnene Alma Canfield,

Debtor(s).

OBJECTION TO CONFIRMATION

TO: Debtor(s) and Attorney for Debtor(s); Gregory A Burrell, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Prestige Financial Services, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).

2. This objection is filed pursuant to Fed. R. Bankr. P. 3015(f) and Prestige Financial Services requests this Court to enter an order denying confirmation of Debtor(s)' proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Tuesday, June 26, 2018**, before the Honorable William J. Fisher, in Courtroom No. 2B, 2nd floor, United States Courthouse, 316 North Robert Street, Saint Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on April 17, 2018 and the case is now pending in this Court.

5. Prestige Financial Services holds a valid, perfected interest in a 2008 Ford Escape, vehicle identification number 1FMCU94108KA88861 (the "Vehicle").

6. Copies of Prestige Financial Services' agreement with Debtor(s) (the "Contract") and evidence of perfection of Prestige Financial Services' interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to Prestige Financial Services as of the petition date totals \$9,272.43. The retail value of the Vehicle is \$7,650.00. Accordingly, the claim of Prestige Financial Services should be treated as secured to the extent of \$7,650.00.

8. The Plan, however, provides for (i) Prestige Financial Services' secured claim of \$5,400.00 with interest accruing at 6.25%; and (ii) total payment on Prestige Financial Services' secured claim of \$5,723.20.

9. The Plan fails to satisfy Prestige Financial Services' secured claim plus interest utilizing the payments set forth by Debtor(s).

10. The interest rate does not comply with the risk formula adopted by the Supreme Court. A plan must provide interest to a secured creditor at a rate equal to the "national prime rate" plus a risk factor ("...the courts must choose a rate high enough to compensate a creditor for its risk..."). *Till v. SCS Credit Corp.* The national prime rate is currently 4.75% and a reasonable risk factor, in this case, is at least 3%. Therefore, Debtor(s)' Plan should provide for interest on Prestige Financial Services' secured claim at a rate of at least 7.75%. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

11. The Plan does not comply with the provisions of Chapter 13.

12. The Plan does not provide Prestige Financial Services with adequate protection of its interest in the Vehicle.

13. Movant gives notice that it may, if necessary, call Brandon Payne or another representative of Prestige Financial Services to testify at the hearing.

WHEREFORE, Prestige Financial Services respectfully requests this Court to enter an order denying confirmation of the Debtor(s)' proposed plan and such other further relief as is just and equitable.

Dated: May 9, 2018

STEWART, ZLIMEN & JUNGERS, LTD.

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Respondent
2860 Patton Road
Roseville, MN 55113
651-366-6380 Ext. 111

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 18-31168

Johnene Alma Canfield,

Chapter 13

Debtor(s).

VERIFICATION

I, Brandon Payne, an AVP of Bankruptcy of Prestige Financial Services declare under penalty of perjury that the facts contained in the Objection to Confirmation are true and correct to the best of my knowledge, information and belief.

Dated: 5/8/18



Brandon Payne
Bankruptcy Specialist
AVP of Bankruptcy

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date <u>01/03/15</u>		Seller CORNERSTONE AUTO RESOURCE 3901 Vinewood Lane Plymouth, MN 55441 "We" and "us" mean the Seller above, its successors and assigns.	Buyer JOHNENE AALMA CANFIELD 7424 44TH ST NORTH OAKDALE, MN 55128 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.
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SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year <u>2008</u> Make <u>FORD</u> Model <u>ESCAPE</u>	VIN <u>1FMCU94108KA88861</u> Lic. No./Year _____ <input type="checkbox"/> New <input checked="" type="checkbox"/> Used
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Other:
Exhibit A

Description of Trade-In	<u>0000</u>	N/A
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SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 17,897.15, plus finance charges accruing on the unpaid balance at the rate of 15.49 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
<u>15.49</u> %	\$ <u>8,974.09</u>	\$ <u>17,897.15</u>	\$ <u>26,871.24</u>	\$ <u>26,871.24</u>

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<u>66</u>	<u>407.14</u>	<u>MONTHLY, BEGINNING 02/17/15</u>

Security: You are giving a security interest in the Motor Vehicle purchased.

☒ **Late Charge:** If a payment is more than 10 days late, you will be charged 5% OF LATE PMNT OR \$6.76 WHICHEVER IS GREATER. ☐ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured

☐ Single ☐ Joint Prem. \$ N/A Term _____

Credit Disability: Insured

☐ Single ☐ Joint Prem. \$ N/A Term _____

Your signature below means you want (only) the Insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer [Signature] d/o/b _____ Buyer [Signature] d/o/b _____

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A of coverage.

This premium is calculated as follows:

☐ \$ N/A Deductible, Collision Coverage \$ N/A
☐ \$ N/A Deductible, Comprehensive Cov. \$ N/A
☐ Fire-Theft and Combined Additional Coverage \$ N/A
☐ _____ \$ N/A

Liability Insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

☒ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover 2008 FORD ESCAPE.

This Service Contract will be in effect for 36 / 999,999

ASSIGNMENT: This Contract and Security Agreement is assigned to PRESTIGE FINANCIAL, the Assignee, phone N/A. This assignment is made ☐ under the terms of a separate agreement. ☒ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recourse.
 Seller: By [Signature] Date 01/03/15

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ <u>881.40</u>)	\$ <u>14,441.40</u>
Service Contract, Paid to: <u>Chrysler ESC</u>	\$ <u>2,500.00</u>
	Cash Price \$ <u>16,941.40</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>N/A</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>N/A</u>
b. Trade-In Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to:	
d. Net Trade-In (b. minus c.)	\$ <u>N/A</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>N/A</u>
Down Payment (e.; disclose as \$0 if negative)	\$ <u>0.00</u>
Unpaid Balance of Cash Price	\$ <u>16,941.40</u>
Paid to Public Officials - Filing Fees	\$ <u>180.75</u>
Insurance Premiums*	\$ <u>N/A</u>
Amount to Finance line e. (if e. is negative)	\$ <u>N/A</u>
To: Document Fee	\$ <u>75.00</u>
To: GAP INS.*	\$ <u>700.00</u>
To: _____	\$ <u>N/A</u>
To: _____	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>955.75</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>17,897.15</u>

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: [Signature] 01/03/15
 Signature _____ Date _____
 Signature _____ Date _____
 Seller: By [Signature]
 Original _____ (page 1 of 2)
 MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

Minnesota Department of Public Safety
Driver and Vehicle Services
445 Minnesota St, St Paul, MN 55101
Web: dvs.dps.mn.gov Phone: 651.297.2126
TTY for hearing impaired customers: 651.282.6555

Pre-Sorted
First-Class Mail
U.S. POSTAGE
PAID
Permit No. 171
Twin Cities MN

PS2701-09

Notification of Lien Perfection

Retain this document – See reverse side of this form for removing this lien.

Plate No.	Make	Title No.	VIN
	FORD	H062C0182	1FMCU94108KA88861
Model Yr.	Model	Security Date	
08	4WSPE	01/03/15	

LIEN HOLDER
1ST SECURED PARTY

CANFIELD JOHNE NE ALMA
7424 44TH ST N
OAKDALE MN 55128



T25 P2 *****AUTO**MIXED AADC 550
PRESTIGE FINANCIAL
PO BOX 26707
SALT LAKE CITY UT 84126-0707

Exhibit B



NADA Used Cars/Trucks

Vehicle Information

Vehicle: 2008 Ford Escape Utility 4D Limited 4WD
3.0L V6
Region: Midwest
Period: April 17, 2018
VIN: 1FMCU94108KA88861
Mileage: 109,549
Base MSRP: \$25,330
Typically Equipped MSRP: N/A
Weight: 0



NADA Used Cars/Trucks Values

Auction*	Base	Mileage Adj.	Option Adj.	Adjusted Value
Low	N/A	N/A	N/A	N/A
Average	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A
Trade-In				
Rough	\$3,200	\$425	N/A	\$3,625
Average	\$4,100	\$425	N/A	\$4,525
Clean	\$4,825	\$425	N/A	\$5,250
Clean Loan	\$4,350	\$425	N/A	\$4,775
Clean Retail	\$7,225	\$425	N/A	\$7,650

*The auction values displayed include typical equipment and adjustments for mileage and any of the following applicable accessories: engine size, drivetrain, and trim.

Selected Options

	Trade-In/Loan	Retail
Aluminum/Alloy Wheels	w/body	w/body
Leather Seats	w/body	w/body

UNITED STATES BANKRUPTCY COURT
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Chapter 13

Johnene Alma Canfield,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

Prestige Financial Services submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Prestige Financial Services holds a valid, perfected interest in a 2008 Ford Escape, vehicle identification number 1FMCU94108KA88861 (the "Vehicle").

The balance due to Prestige Financial Services as of the petition date totals \$9,272.43. The retail value of the Vehicle is \$7,650.00. Accordingly, the claim of Prestige Financial Services should be treated as secured to the extent of \$7,650.00.

The Plan, however, provides for (i) Prestige Financial Services' secured claim of \$5,400.00 with interest accruing at 6.25%; and (ii) total payment on Prestige Financial Services' secured claim of \$5,723.20.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor(s) have proposed payments that do not satisfy Prestige Financial Services' secured claim plus a reasonable interest rate. A plan must provide interest to a secured creditor at a rate equal to the "national prime rate" plus a risk factor ("...the courts must choose a rate high enough to compensate a

creditor for its risk...”). *Till v. SCS Credit Corp.* The national prime rate is currently 4.75% and a reasonable risk factor, in this case, is at least 3%. Therefore, Debtor(s)’ Plan should provide for interest on Prestige Financial Services’ secured claim at a rate of at least 7.75%. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, Prestige Financial Services respectfully requests that the Court deny confirmation of Debtor(s)’ Chapter 13 Plan.

Dated: May 9, 2018

STEWART, ZLIMEN & JUNGERS, LTD.

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Respondent
2860 Patton Road
Roseville, MN 55113
651-366-6380 Ext. 111

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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UNSWORN CERTIFICATE OF SERVICE

I, Bradley J. Halberstadt, declare under penalty of perjury that on that on the date set forth below, I served copies of the foregoing **Objection to Confirmation** upon each of the entities named below by electronic transmission or by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
1015 US Courthouse
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
James C. Whelpley
Twin City Attorneys PA
2151 N Hamline Ave
Suite 202
Roseville, MN 55113

(Trustee)
Gregory A Burrell
100 South Fifth Street
Suite 480
Minneapolis, MN 55402

(Debtor(s))
Johnene Alma Canfield
7424 44th St. N.
Oakdale, MN 55128-2288

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: May 9, 2018

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 18-31168

Chapter 13

Johnene Alma Canfield,

Debtor.

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED that confirmation of the Chapter 13 plan of Debtor is denied.

Dated: _____

William J. Fisher
United States Bankruptcy Judge